



VJP,J.

C.M.A.No.667 of 2023:APHC:24803

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

C.M.A. No.667 of 2010

Between:

National Insurance Company Limited

.... **Petitioner**

And

1. Sri Terri Tulasi Rao and another.

....**Respondents.**

Date of Order pronounced on : 24.02.2023

HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

1. Whether Reporters of Local newspapers : Yes/No
may be allowed to see the judgments?
2. Whether the copies of judgment may be marked: Yes/No
to Law Reporters/Journals:
3. Whether the Lordship wishes to see the fair copy : Yes/No
of the Judgment?

VENKATA JYOTHIRMAI PRATAPA, J



***HON'BLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA**

+ C.M.A No.667 of 2010..

% 15.03.2023

National Insurance Company Limited

.... Petitioner

And

1. Sri Terri Tulasi Rao and another

....Respondents.

! Counsel for the Petitioner: Sri Mutevi Muralikrishna

Counsel for the Respondents: Sri Naram Nageswara Rao

<Gist :

>Head Note:

? Cases referred:

- 1) 2003 (4) ALD 183
- 2) 2019 (11) SCC 514
- 3) 2021 SCC OnLine SC 3133



THE HON'BLE SMT JUSTICE VENKATA JYOTHIRMAI PRATAPA

C.M.A.No.667 of 2010

JUDGMENT: -

This appeal is directed against the impugned order in W.C. No.20 of 2009 dated 12.04.2010 on the file of the Deputy Commissioner for Workmen's Compensation Act and Deputy Commissioner of Labour, Eluru.

2. Appellant herein was the opposite party No.2. Respondent No.1 was the applicant and Respondent No.2 herein was the opposite party No.1, who is the owner of the vehicle for the sake of convenience, the parties will be referred as arrayed before the Commissioner.

3. Case of the applicant is that he was a lorry cleaner under opposite party No.1 and he sustained injuries in an accident occurred during the course of the employment, he seeks for a compensation of Rs.3,00,000/- for the injuries sustained.



4. The contention of the owner/Opposite Party No.1 is that the offending vehicle, lorry bearing No.AP 37 Y 6999 is insured with Opposite Party No.2 and the policy was in force at the time of accident and the Petitioner has been working as a cleaner of the said lorry for four (04) years. There is no liability to the owner and the insurance company has to pay the compensation sought for.

5. The attack of the insurance company over the claim of the applicant was that the claim is on higher side, the applicant has to prove that he is a worker and had sustained injuries during the course of employment under opposite party No.1 and spent 50,000/- towards medical expenses.

6. During the course of enquiry, the applicant himself was examined as AW-1. The applicant examined the doctor as AW-2. The opposite party No.2 filed a copy of insurance policy. The learned Commissioner framed the following issues:

Issue No.1:-Whether the applicant sustained permanent partial disability due to accident aroused during the course of employment?



Issue No.2:- If so, what compensation the Applicant is entitled to and who is liable to pay?

7. After hearing both parties and on appreciation of material on record, the learned Commissioner granted compensation of Rs.1,83,139/- against Opposite Parties 1 and 2 and directed them to pay the amount within 30 days from the date of receipt of the order failing which, they shall be liable to pay 50% penalty together with interest per annum.

8. Aggrieved by the impugned order, opposite party No.2/ Insurance Company preferred the present appeal on the ground that the learned Commissioner erred in granting compensation considering the disability @ 40% though amputation of lower limb was not proved, that there is a discrepancy in the wound certificate Ex-A2 about the amputation of the lower limb, that the applicant failed to examine the doctor who treated him, that the evidence of AW-1 and 2 is inconsistent and without assigning any reason without proof of the disability, the learned Commissioner awarded the compensation.



9. Heard the learned counsel on both sides. Perused the material on record. The substantial question of law involved in this appeal as framed by the appellant are:-

- i) Whether the learned Commissioner is correct in granting the compensation though the applicant failed to prove the disability?
- ii) Whether the learned Commissioner can grant compensation and the applicant failed to examine the doctor who treated him to prove his disability?

10.The points referred above are interlinked and hence this Court is inclined to answer them commonly. The challenge against the order impugned by the Insurance Company is mainly on the point that applicant failed to examine the doctor who treated him and could not establish the amputation of lower limb to get compensation to the extent of 40% disability.

11.A bare perusal of the order impugned would clearly go to show that the applicant is a cleaner for the lorry bearing No. AP 37 Y 6999. There is no dispute about the fact that opposite party No.1 is the owner of the said lorry. It is an undisputed fact that the



applicant worked for the period of four (04) years immediately preceding to the date of accident for the said vehicle under opposite party No.1. It is also not in dispute that he sustained injuries during the course of employment.

12. The applicant, in order to prove his injuries and treatment, categorically deposed as AW-1 by filing chief examination affidavit. Nothing has been elicited by the Insurance Company by cross examining AW-1. The evidence of AW-1 coupled with Ex.A2, would show that immediately after the accident, the matter was forthwith reported to the police and registered it as a crime. Ex.A5, would show that the driver of the lorry had a valid driving license. Ex.A3, which is the remand report would establish that the accused was taken to remand in pursuance of the crime registered. A cursory look of Ex.A4 disability certificate would prove that the applicant sustained injuries when he met with an accident on 04.05.2009 resulting which he sustained grievous injury resulting in permanent disability.

13. AW-2, who is the doctor deposed corroborating the version of the applicant to the extent of the injuries sustained by him and



also the disability to the tune of 40%. Applicant claims that he was 30 years old at the time of accident and medical report also shows the same. Accordingly, the learned Commissioner has taken the relevant factor. The learned Commissioner rightly observed that in absence of any proof of income, the minimum wages payable to the category of cleaner as per G.O. Ms.30 dated 27.07.2000, i.e., Rs.3,669/- per month is considered. Accordingly, he calculated the loss of 40% permanent disability and arrived at Rs.1,83,139/-.

14.In the present case, the opposite party No.2 did not choose to adduce any evidence in support of their pleadings. The doctor, who was examined as AW-2 is not the doctor who treated the injured. He categorically stated that he is a Civil Surgeon in Government Hospital, Eluru since 1999, and one of the members in the District Medical Board, Eluru. On 19.09.2009, he examined the applicant and assessed the disability at 40%. He clearly deposed that the disability was due to amputation of lower limb which is permanent in nature. The applicant cannot work as a cleaner due to the said disability. AW-2 flatly denied the suggestion that the nature of injuries sustained by the applicant



will not have any impact on his duties. A Division Bench of the Composite High Court of Andhra Pradesh in ***Charan Singh vs G. Vittal Reddy and Anr.***¹ held thus,

“Under those circumstances, we are of the considered view that Section 4(1)(c) does not stipulate a requirement of assessment by the medical practitioner who had treated the workmen concerned at the first instance. It is always open for the qualified medical practitioner to assess the loss of disability vis-a-vis loss of earning capacity with reference to the injuries sustained by him and if the employer or the Insurance Company was not satisfied with the assessment made by the medical practitioner, whose evidence was produced, contra evidence ought to have been adduced by the Insurance Company to rebut or impeach the evidence of the medical officer adduced on behalf of the workmen. In the absence of such evidence, we cannot find fault with the order of the learned Commissioner”

15.The contention of the appellant is flatly denied that the injuries referred in the wound certificate and the disability certificate are not one and the same. The appellant is not an eye witness to the occurrence. The doctor AW-2 supported the version of the injured. Any number of pleadings without evidence is of no use. It is pertinent to mention that no appeal lies under Section 30 of the Workmen Compensation Act, unless there is a substantial question of law. The substantial question of law framed by the

¹ 2003 (4) ALD 183



appellant herein are only for the purpose of the appeal but in reality, order impugned challenged on factual aspects.

16.In ***North East Karnataka Road Transport Corporation v. Sujatha***,² the Hon'ble Apex Court reiterated the restriction of jurisdiction in appeal under the Act by virtue of Section 30 and has observed in the following terms;

".....The appeal provided under Section 30 of the Act to the High Court against the order of the Commissioner is not like a regular first appeal akin to Section 96 of the Code of Civil Procedure, 1908 which can be heard both on facts and law. The appellate jurisdiction of the High Court to decide the appeal is confined only to examine the substantial questions of law arising in the case...."

17. Similarly in ***Shahjahan and Another v. Shri Ram General Insurance Co. Ltd.***³, the Hon'ble Apex Court reiterated that the High Court ought not decide a Section 30 appeal as if it is a first Appellate Court on the questions of fact

18.In the light of the evidence of the AW-1 and 2 coupled with Ex.A1 to A5 clearly establishes the case of the applicant. Nothing

² 2019 (11) SCC 514

³ 2021 SCC OnLine SC 3133



to interfere in the order impugned, Appeal is liable to be dismissed.

19.In the result, the Civil Miscellaneous Appeal is dismissed. In the circumstances of the case, the parties shall bear their own costs.

Miscellaneous Petitions pending, if any, shall stand closed.

JUSTICE VENKATA JYOTHIRMAI PRATAPA

Date: 24.02.2023

MVK

Note: LR copy to be marked



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**THE HON'BLE SMT JUSTICE VENKATA JYOTHIRMAI
PRATAPA**

C.M.A.No.667 of 2010

Date: 24-02-2023

MVK